

MUNICIPAL CORPORATION OF GREATER MUMBAI

Speaking Order

Sub: To consider and to decide the compliance of the directions dtd. 21.12.2015 given by the Hon'ble High Court under Writ Petition no. 1659 of 2015 in DB Reality V/s State of Maharashtra.

Hon'ble High Court vide order dtd. 21.12.2015 has directed that "*Municipal Commissioner to consider the representation of the petitioners. It is further clarified that representation may be given within the week & within a week thereafter the Commissioner may decide the representation of the petitioners on merits and in accordance with the law.*"

Accordingly, the representation was submitted by the Advocates and Solicitor negandhi shah & himayatullah on behalf of petitioners. The hearing was given by the undersigned to the Writ petitioners in the matter.

There are mainly three issues in regards to provision of Regulations 35(2)(iv) of DCR 1991 & the corresponding circular issued by MCGM u/no/CHE/22276/DP/Gen dtd.12.1.2012 particularly clause no. B(12), elaborated as below.

1. Computation of staircase/ lift/ lift lobby etc. as per DC Regulations 35(2)(iv):-

In this case the concession report of the proposal u/no. CHE/WS/0477/H/337 (New) pertaining to M/s D.B. Reality & Builders Pvt. Ltd. as a Developer has been submitted to Municipal Commissioner to obtain various concessions involved in the proposal. One of the concessions in the said proposal at sr. No.2 is "for allowing the staircase/ lift well & specified lobbies (which cannot be merged with habitable area).

Modified D.C. Reg.no.35(2) States that "The following shall not be counted in FSI". Further, sub clause (iv) of the said reng. States that, "Areas covered by staircases/ lift wells including lobbies specified,".

It is the fact that regulation does not specified anywhere about what are the lobbies specified. Hence to have uniform approach to avoid discretion the circular was issued by MCGM under No CHE/22276/DP/Gen, Dated 12/1/2012. Sr No 12 of the said circular describes about the lobbies that shall not be counted in FSI as per D.C. Regn 35(2)(iv). Hence while granting the concession in proposal under reference, it was approved as proposed *subject to allowing lobbies free of FSI as per the present policy.*

2. Charging of premium for lift well:

The Petitioner's main contention in this respect is that, the lift shaft does not have a the slab and is only a concrete tube having lift pit at ground floor & lift machine room at top floor with no intermediate slab, there is no provision to charge premium for lift shaft at every floor. The Regulation 35(2)(iv) uses the word 'lift well' & it's meaning by implication is as open shaft for movement of elevators & which can not be constituted built up area & hence no premium can be charged.

The provisions of 35(2)(iv) is reproduced hereunder,
"The areas covered by staircases/ lift wells including lobbies as specified excluding these covered under DC Regulations no. 35(2)(iii) with special written permission of the Commissioner, subject to payment of premium."

Further provision of the clause 22(m) of MR & TP Act 1966 is reproduced hereunder:-
"provision for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority (including imposition of fees, charges and premium at such rate as may be fixed, by the State Government or the Planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of) conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisements signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act".

As per the above provision, Municipal Commissioner is empowered to impose the premium from time to time for grant of special permissions, use to discretionary powers under the relevant DCR.

Further, the definition of 'lift' as per Regulations 2(57) of DCR 1991 is as under:
"A mechanical guided car, platform for transport for persons & materials between two or more levels in vertical ~~or~~ subsequently vertical directions."

Also the definition of "Built up area" as per Regulations 2(13) of DCR 1991 is as under:

" means the area covered by a building on all floors including cantilevered portion, if any, but excluding the areas excluded specifically under these regulations".

In view of the above provisions in DC Regulations 1991 & MR & TP Act 1966, the lift is a movable mechanical platform available at each habitable/ non habitable floor for transportation without which the floor of the building could not be completed. The floor plate of the building includes the area of lift well also. Further while calculating the built up area of floor of the buildings, the area of the lift & corresponding lift lobby is also taken into account, being a part of the floor of the building, the area of staircase/ lift well including lobbies as specified is allowed free of FSI, with the special permission of the Commissioner by charging premium, in view of the provision under modified DCR 1991 & MR & TP Act 1966 as per present policy.

This is not a new policy or procedure of MCGM to charge premium at each level. This is being implemented from inception of DCR and may be prior to that.

In view of above facts, the contention of Petitioner to charge premium at only one level can not be accepted as represented.

3. Calculation of the common wall between habitable floor & lift/ staircase into FSI:

In this case Petitioner represented that common wall between staircase/ lifts & habitable room shall be allowed free of FSI as the same is part of lift & there is no possibility of misuse the same.

It is the practice followed by MCGM since long that for computing the areas of lift/ staircases, the areas of adjacent walls to cover the said lift/ staircase is also taken into account if there is no adjacent area behind the wall. When there is any habitable area adjacent to the said wall so that the said wall becomes the common between the habitable area and lift/ staircase, then the wall is taken in to computation of FSI along with the habitable area. The reason behind this is that the habitable area can't be without enclosure by wall. The said practice is correct and there is no reason to change. Hence the contention of petitioner can not be accepted.

Ajay Melt
Municipal Commissioner